JOHN T. FEY, Clerk

# APPENDIX OF APPELLEE

In the

## United States Court of Appeals

for the Fourth Circuit

**No. 7452**

FRED FRANKEN,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

Albert M. Morgan,
United States Attorney,
202 Post Office Building,
Fairmont, West Virginia

JUSTICE-FELTZ PRINTERY, FAIRMONT, W. VA.

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Excerpts From Transcript of Proceedings
at Wheeling

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PROCEEDINGS
Monday, January 7, 1957

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(tr 2) * MR. MORGAN: I understand there is another defendant in the court room for arraignment this morning, Mr. Fred Franken.

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* NOTE: "(tr --)" set flush left refers to pages of reporters transcript.

Thereupon, the defendant presented himself at the bar of the court.

THE COURT: Do you have counsel, Mr. Franken?

THE DEFENDANT: I am in the process of negotiating with counsel now, Your Honor.

THE COURT: You haven't employed counsel yet?

THE DEFENDANT: No, sir, not—I had an attorney from Youngstown with me but he cannot practice in the United States Court, so I have been in telephone conversation to have a meeting after my arraignment.

THE COURT: Have you been furnished with a copy of this indictment?

THE DEFENDANT: Yes, sir.

THE COURT: Have you seen it?

THE DEFENDANT: Yes, sir.

THE COURT: You are fully familiar with the nature of the charge against you?

THE DEFENDANT: Yes, sir.

THE COURT: You say you are in the process of negotiating the employment of counsel?

THE DEFENDANT: Yes, here in Wheeling.

(tr 3) THE COURT: The court had in mind this morning arraigning you and asking you to enter a plea to this charge, although the court does

not want to do that if you feel you need the advice of counsel before entering your plea.

THE DEFENDANT: Their advice was to plead not guilty and come and see them then.

THE COURT: Then you are prepared to plead to the indictment this morning in the absence of counsel?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You understand, Mr. Franken, that you and two other defendants, Paul Albert DeArdo and James A. Whitehead, are charged with a conspiracy?

THE DEFENDANT: Yes, sir.

THE COURT: And what is your plea to that charge, guilty or not guilty?

THE DEFENDANT: Not guilty.

THE COURT: Plea of not guilty. Is this defendant under bond?

MR. MORGAN: Yes, I believe he is.

THE COURT: Is it a continuing bond in this court?

THE CLERK: Yes, sir.

THE COURT: Very well, Mr. Franken. I would suggest that you communicate or keep in touch with the United States Attorney, because in these cases where there are pleas of
(tr 4) not guilty entered we are going to prepare for trial very shortly.

THE DEFENDANT: Yes, sir.

• • • •

PROCEEDINGS

MONDAY, JANUARY 21, 1957

* * * *

(tr 6) MR. SPILLERS (Continuing): — which took most of that week. I didn't get to see Mr. Green after that. Mr. Charles McCamic died on Sunday, two weeks ago, and on Monday morning I received a call from Mr. Wesley Tinker, of the firm of McCamic & Clarke — we were making arrangements for the Bar to meet in accordance with the custom of the Ohio County Bar — and he advised me that he had been approached by Mr. Franken, and said that because of a good many things he (tr 7) could not represent him and asked if I would do so, or my firm, and I told him we would do what we could to help out.

We got in touch with Mr. Franken and he came to our office on Thursday of this last week. Mr. Russell Goodwin went in and started studying this indictment, and it's a rather complicated indictment, Your Honor — there are, I believe, nine overt acts alleged in a conspiracy indictment — and we immediately filed a motion for a bill of particulars, but when there was indication from the United States Attorney's office that it was the plan of the Court to have this case tried today we saw we couldn't get ready for it. We worked on Saturday and Saturday afternoon and part of yesterday.

* * * *

(tr 8) THE COURT: You my file the motions but the Court will not hold out much hope to you that the case will be continued. I want you to understand the Court's position, Mr. Spillers. Mr. Tinker called me by telephone when I was in my office at Parkersburg. He told me at that time that his firm had been approached by Mr. Franken as to representation of Franken in this case; that they had told him that they would make an investigation and would then advise him as to whether or not they would represent him at all. That, as I understand it, was done on the day that Mr. Franken was arraigned in this court. However, the indictment in this case was returned on December 12 and Mr. Franken had knowledge of that indictment shortly thereafter, so I am advised.

Mr. Tinker said that it would be impossible for him to even complete his investigation of the case by today, which was the day that had been indicated for trial, and I told him

(tr 9) at that time that I thought under the circumstances this defendant had been very lax in his efforts to secure counsel; that, so far as I was concerned, the case would not be continued, and he said, "Then, under the circumstances, we cannot represent this defendant because we cannot make our investigation by that time." Now, what position does that leave the court in if I tell one counsel that and then other counsel should come in and say "We want to continue the case because we haven't made an investigation?"

MR. SPILLERS: I say, Your Honor, that that is not the only ground that we are urging, and I must say in Mr. Tinker's behalf that just what the Court has stated here Mr. Tinker advised me of that, with the further addition that it was his opinion that Your Honor had misunderstood this man in one particular — I understood him to say that he understood from you that Mr. Franken stated that he had counsel. He did appear in Fairmont with the man from his city, Youngstown, Ohio, who has been his counsel in civil matters over the years, on an early day in January; but this is a man who is not familiar with criminal procedure, and at that time he had stated that he could not represent him, that he would have to get someone else, and since then Mr. Franken has been trying to get counsel.

• • • •

(tr 10) THE COURT: When Mr. Franken appeared here for arraignment he stated that he had consulted with counsel and that counsel had advised him to appear here and enter a plea of not guilty.

MR. SPILLERS: I think that's right.

THE COURT: Very well, he evidently had counsel at that time.

MR. SPILLERS: I don't believe that Mr. McCamic and Mr. Tinker ever did take his assignment, but they did do some investigation and they have turned that over to me — or to Mr. Goodwin. We have had the benefit of that, and it's quite considerable.

THE COURT: You may proceed, Mr. Spillers, with presenting any motions you want to make.

• • • •

(tr 11) MR. SPILLERS: On the matter for continuance, Your Honor, when the plea of not guilty was entered here on the 7th day of January, that was after the defendant had talked to Mr. Tinker and it was on Mr. Tinker's advice to do that,

(tr 12) but with the clear understanding that Mr. Tinker and his partner had not accepted the responsibility of being defense counsel, and that was before we learned anything about the case. I can understand that since this indictment did come out in the middle of December, this is over a month later, that the Court would feel that this resident of Youngstown, Ohio, has not used proper diligence. On the other hand, Your Honor, it is a complicated case, to us, at least—a conspiracy indictment, it has nine overt acts alleged, it takes time to prepare for this. It is a felony indictment where his liberty is at stake, and on his behalf I should like very much to have more time to prepare for this, if the Court can grant it, because I had never met him, never knew a thing about the case myself until on Thursday of last week. I hope that, in order to properly prepare and see that he has proper defense to this serious charge, additional time can be granted. I have not worked on it as hard as Russell B. Goodwin has, but we have spent a good many hours on it. We tried to reach some essential witnesses yesterday morning at Steubenville, Ohio, and I went up there on Saturday night to talk to one, so I hope

the Court will consider that this is not a case where we have sat idly by, realizing that there was a thought in the mind of the Court that it would go to trial this morning.

(tr 13) THE COURT: The fact is, Mr. Spillers, that the court indicated to counsel for the Government that it was the court's desire to set these cases for trial a week earlier than today, last Monday—

MR. SPILLERS: Yes, sir.

THE COURT (Continuing):—and the United States Attorney assured me that he thought it would be only fair to give these defendants further opportunity to prepare for trial, and asked that the matters go over until today. Then when the court was advised that motions were to be filed, the court instructed the clerk not to call the jury back until tomorrow. Now, I do not have any doubt in my mind that you have been as diligent as you could be, under the circumstances. However, it was probably reported to you the conversation that Mr. Tinker had with the court—

MR. SPILLERS: Yes, sir.

THE COURT:—that the court was unwilling to continue the case for the purposes of further investigation because the court felt that this defendant had been anything but diligent in undertaking to secure counsel and get this case ready for trial, since it has been over a month since this indictment was returned—about a month and a week—so the court is not kindly disposed toward

the motion to grant a continuance. In other words, if these defendants, by

(tr 14) sitting idly by and doing nothing in connection with the preparation of the defense of their cases, can run the affairs of this court then I think we had better close the court, and the court is not disposed to do that

MR. SPILLERS: Well, of course,I am an officer of this court and will have to do whatever the Court decides. There are a number of people essential here. One of them is a Mr. Johnson, who formerly worked for the Follansbee Steel Company at Follansbee. I have been unable to get him. He is essential to the proper defense of this. I think, from what I have learned, just from examining the records here, that the Government worked on this case over a year to get it ready to present to the Grand Jury—a matter of a conspiracy indictment with two other people in here, and I have been advised that one or two of these co-defendants have already entered pleas of guilty in this case. I have not talked to them—maybe they wouldn't talk to me. But here is a man who has lived all of his life without ever being in court before—no record except that of a law-abiding citizen—faced with something that could be very serious to him, and I submit to Your Honor that it is a matter that takes a considerble amount of time to prepare for. I am not urging, because I am of record here, the illness of Mr. Goodwin, but I feel that we were employed.

(tr 15) because of him as well. Of course, if the Court sets this for trial and the jury is called, I

promise you that I will do everything I can to put in all the evidence that this Court would need to properly try it.

THE COURT: I can only repeat, the court is not disposed to grant the motion for continuance at this time.

MR. SPILLERS: I do hope that the Court will not take this matter that Mr. Tinker urged—he did report that he couldn't possibly be ready for trial, and he did considerable amount of work, making trips to two or three different states to gather information, and that is helpful, but we haven't seen those people that he talked to, and he didn't, by any means, get to see them all, and he couldn't be ready for trial.

THE COURT: His statement to me was that he couldn't even make up his mind whether he wanted to represent this man by today.

MR. SPILLERS: I think that's correct, also, but we didn't take that as a ground.

THE COURT: No, neither did the court.

• • • •

(tr 15-0) MR. MORGAN: The Government objects to the motion, of course.

The Government, going back to the motion for a bill of particulars, feels that some of the matters in there are known to the defendant or he has

means of ascertaining the information. For example, he knew that Paul DeArdo was
(tr15-P) the plant manager of Lorentzen Hardware and that their home office was in Hoboken. They have several plants. I think I can prove that the defendant knew that. But there is nothing in the indictment that shows the position with the company of James A. Whitehead, and whether the Court would require me to make a formal bill of particulars to disclose that, if he's entitled to know it—he was the mechanic of the plant of the cars and trucks over there. As far as I know, that was his official capacity. I was under the impression that maybe Mr. Franken knew that, but apparently he does not.

• • • •

(tr 15-Q) THE COURT: The Government has now disclosed the relationship with the Lorentzen Company of DeArdo and Whitehead, who are both defendants in this case, who have entered their pleas of guilty, so you now have that information, Mr. Spillers.

MR. SPILLERS: I don't have the one very essential thing yet, Your Honor. I asked what the capacity was of this DeArdo, whether or not he had authority to make sales for his company.

THE COURT: Well, going on beyond that, you have also raised the question as to an individual by the name of
(tr 15-R) Fabian.

MR. SPILLERS: Yes, Your Honor.

THE COURT: Is there any objection on the part of the Government to disclosing his relationship with the company or his capacity?

MR. MORGAN: Not at all. Thomas Fabian was what they call a slitter man in the steel business. But this was not a concern that bought and sold steel, it was a manufacturing concern that made venetian blinds. They never sold any steel, particularly prime steel of this kind that I have been informed of. Even rejects they get from Weirton Steel Company, they send those back. But nobody in the Weirton plant of Lorentzen Hardware Manufacturing Company, as I understand it, had the authority to sell steel. They may have sold scrap, but not steel.

THE COURT: In other words, this was rolled steel that was for their use, for the use of Lorentzen Company, in the manufacturing of venetian blinds?

MR. MORGAN: That's right.

THE COURT: Does that answer your question, Mr. Spillers?

MR. SPILLERS: Yes sir. It's the position that they didn't sell steel, and nobody up there had authority to sell steel except scrap.

* * * *

(tr 15-T) THE COURT: * * * * The motion to dismiss the indictment will be overruled.

The motion of the defendant Franken for discovery and inspection will be overruled.

For the reasons stated earlier this morning the motion for a continuance will be overruled.

As to the motion for a bill of particulars, some of the information has been furnished here at the bar of the court, some of the information that seemed to be particularly important to defense counsel. Is it your desire, Mr. Spillers, that the information already furnished at the bar of the court be put in a formal bill of particulrs?

MR. SPILLERS: No, Your Honor, I wouldn't require that.

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(tr 16) AFTERNOON SESSION

* * * *

MR. GOODWIN: Your Honor please, since we met here this morning and argued our various motions in this case we have learned certain facts which we believe should be

(tr17) made of record to the Court and presented to Your Honor. Mr. Spillers mentioned this morning that my father, Russell Goodwin, was ill this morning and could not come in. Probably a little bit more should be said about that. I have discovered since noon today that he not only will not be in today, he will not be able to participate in this case at all if it is tried tomorrow. I talked with him by telephone after noon today. He has almost completely lost his voice and is feeling very badly. Mr. Franken came to our office first, as was told you this morning, last week—that was on Wednesday—and practically all the time that has been spent with Mr. Franken, the defendant, Mr. Russell Goodwin spent with him. He came in to our office and spent about six hours with my father last Wednesday, who went over his entire matters, and, frankly, he kept almost all this information in his own head. No one stayed in that conference except my father. He intended to try this case himself. Mr. Spillers didn't see him on that particular occasion. He was back in our office on Friday after all motions in this case had been prepared by Mr. Russell Goodwin. When he came in on Friday he talked with Mr. Spillers briefly. That was only about a matter

of forty-five minutes to an hour, at most. Therefore, Mr. Spillers and myself are not well acquainted with this case. • • •

THE COURT: Mr. Goodwin, I think this court would like to be as considerate as possible under all the circumstances of the case, but it occurs to me still that if there is any disadvantage resulting from this situation to Mr. Franken it is entirely his own fault and due to his own dereliction. To wait until three or four days before a trial date to go out to engage counsel is certainly inexcusable negligence in the opinion of this court. He would have had ample opportunity to talk to Mr. Goodwin and Mr. Spillers at length had he started earlier and if Mr. Spillers was to participate in the trial of the case he would have been fully advised as to everything in connection with the case—and I may say that in arguing the motions here this morning he displayed to this court a very intimate knowledge of all the facts and circumstances apparently surrounding it, seemed to have a good grasp of the case. I realize that Mr. Russell B. Goodwin is an experienced trial lawyer, but I realize also that so is Mr. Spillers, and Mr. Spillers has served as United States Attorney in this court. It cannot be said by anyone that he is incompetent or unable to try the case.

(tr 20) MR. GOODWIN: Your Honor please, I did not mean to infer that, and I certainly —

THE COURT: I realize you didn't and I'm not saying that you did. I don't want to be misunderstood in that particular.

MR. GOODWIN: I merely said that I think he was relying on Mr. Russell Goodwin's knowledge of the matter in the trial of the case and his investigation of it through Mr. Franken, which he is not going to have the benefit of.

THE COURT: He evidently learned a lot about the case from someone because he displayed that knowledge here this morning; and Mr. Spillers further said that if it was the disposition of the court to overrule the motion for a continuance he wanted to assure the court that he would be here and try the case as best he could.

• • • •

THE COURT: Yes, sir, I sincerely hope so too. Mr. Goodwin, I might say, in addition, that the court is

(tr 21) advised that the Government has a large number of witnesses in this case, that some of them come from quite a distance. It has been a matter of great expense to bring them here. The fact of the matter is it may be difficult at some time in the future to even get them back here, and that's the reason that the court feels that, having made the preparation, it is necessary to proceed with the trial.

MR. GOODWIN: I understand that, Your Honor. We are in the same position, Your Honor,

these transactions having gone on over a year, nine separate transactions, and our witnesses are also from a great distance and we wanted more time, for that reason, and —

THE COURT: The court would be inclined to give consideration to that fact during the trial of the case, Mr. Goodwin, and that is as far as both sides are concerned. If you haven't had the opportunity to confer with your witnesses that may be done, even at the cost of some delay or some recess or something of that kind that it may be necessary to have during the course of the trial.

MR. GOODWIN: Thank you very much.

EXCERPTS FROM TESTIMONY

PROCEEDINGS

(BEGINNING)

TUESDAY, JANUARY 22, 1957

• • • •

(tr 26) PAUL ALBERT DeA..DO

For the Government — Direct.

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(Reference is made to DeArdo's testimony as printed in Appellant's Appendix, pages 26 - 47, 96 - 99.)

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(tr 83) JAMES A. WHITEHEAD

For the Government—Direct.

• • • •

(Reference is made to Whitehead's testimony as printed in Appellant's Appendix, pages 74 - 95.)

• • • •

(tr 121) RICHARD B. RITCHASON

For the Government—Direct.

• • • •

By Mr. Morgan:

Q Your name is Richard B. Ritchason?

(tr 122) A Yes, sir.

• • • •

Q And what is your occupation?

A Terminal manager, dispatcher.

Q For what company, sir?

A The Aetna Freight Lines.

• • • •

(tr 125) Q How was that haulage engaged by your company by Mr. Franken? In other words, did he call you up? Was he there?

A He called me by telephone from Youngstown.

Q And then what happened? What did he say to you and what did you say to him?

A He asked me to pick up this steel at Lorentzen Hardware, showing Fred Franken as shipper, Weirton, West Virginia, and delivered to Sharonsteel Products, Farrell, Pennsylvania, freight collect.

Q And did he tell you a certain time to place the trucks there?

A After five in the evening.

they didn't want to be loading trucks while that paint line was running on account of dust.

• • • •

(tr 183) RALPH P. CARROCCE

For the Government - Direct.

By Mr. Morgan:

Q You are Ralph Carrocce?

A Yes, Sir.

• • • •

Q And what is your occupation?

A Truck driver.

Q How long have you been a truck driver?

A About twenty-two years.

Q And who do you drive for?

A A & A. Trucking right now.

Q And who did you drive for in May 1955?

A McCullough Transfer.

• • • •

(tr 184) I will hand you Government's Exhibit No. 12, and ask you if you have seen that before, if your name appears on it, and if that is the shipment for which you went to Lorentzen on the occasion you just testified concerning.

A Well, I filled in this eight steel coils, that weight, 845,869. That's what I delivered on, right here.



Q Was that the procedure you went through in making shipments for Fred Franken from Weirton to either Sharon or Farrell, or Pennsylvania or Chicago?

A Yes.

Q In each case?

A Yes, sir.

• • • •

(tr 132) Q Mr. Ritchason, did you prepare each one of these bills of lading?

A All but the Chicago bill of ladings. The boys went all way through to Chicago and our Chicago terminal manager prepared those.

Q All the way to Chicago, where they were prepared?

A Yes, that's right.

Q May I inquire whether it is customary for you in your official capacity as dispatcher for your company to prepare bills of lading?

A Only in a case of this kind.

Q What kind of a case is this?

A Where a man calls you and tells you to pick it up at a certain destination and take it someplace else; in other words, brokering.

(tr 133) Q Did he tell you when to pick it up?

A Yes, sir.

Q When?

A After five o'clock the same day he called me.

Q Did the drivers have anything in any of these cases, as far as you know, from the Lorentzen plant to show that they had title to the property on their truck, or that they had possession of it?

A All they had was weight slips.

Q Did that have "Lorentzen" on it?

A I don't believe.

Q Normally, when you do prepare bills of lading -- and I assume that you have before, is that right?

A That's right.

Q Do you receive some papers from the shippers?

A Yes, normally, yes.

Q What kind of papers do you receive, normally?

A Well, packing list.

Q A packing list.

A Yes, sir.

Q What is that?

A It shows what you have on your truck.

Q Why didn't you prepare these bills of lading before you sent your trucker to Lorentzen, Mr. Ritchason?

(tr 134) A Well, I didn't have the weights yet.

Q You had to wait until the driver got the weights from whoever gave them to him at Lorentzen before you could prepare the bills of lading?

A That's right.

Q Would you say this was a regular way to move freight by your company?

A No, it wasn't regular. Of course, at that time it was a normal procedure. We did it for several other customers.

Q You did it for several other customers?

A Yes, sir.

Q You mean you prepared bills of lading?

A Yes, sir.

Q But you always had packing lists when it came in, didn't you?

A Yes, sir.

Q And you didn't in any of these cases?

A No, sir.

• • • •

(tr 135) Q After the Aetna drivers which you had dispatched to the Lorentzen plant had returned with their cargo to Columbiana and you had made

out the bills of lading and they had moved their cargo on out to the ultimate consignee, as you testified yesterday, please state to the Court and jury how long thereafter the information as to the weights contained on those bills of lading was made known to the

(tr 136) defendant, Fred Franken.

A Well, Fred would call me on different occasions and find out; sometimes it would be a day, two days, possibly three days, later.

Q As to various shipments?

A Right.

Q Did he ever come by the terminal?

A I believe he did on a few occasions stop at the terminal and get the exact weights.

Q Did he ever sign any of these bills of lading, if you remember?

A Not to my knowledge, no, sir.

Q You never saw him sign any of these bills of lading in your presence?

A No, sir.

Q I don't believe you testified yesterday why you sent your dispatchers to the Lorentzen plant at Weirton, West Virginia, after working hours, or after five o'clock. Will you tell the Court and jury why you sent them at the late hours?

A I inquired to Mr. Franken why he didn't want the trucks until after five, and it seemed as though they had a paint line working there, and

Q And in accordance with that request what did you then do?

A I sent the trucks down there at the time he said.

• • • • •

(tr 126) Q He got the load?

A Yes, sir.

Q How do you know that?

A By my records. He didn't return the manifest telling me it wasn't picked up, so evidently he got the load.

Q What did he do with the load, if you know?

A Delivered it to Sharonsteel Products at Farrell, and then sent the bills in to our Warren office.

Q Did he have a bill of lading, if you know?

A Yes. Yes, sir.

Q Who gave him the bill of lading?

A I did.

Q When?

A When he come up through with the load.

Q He had the load from Lorentzen at Weirton when he came back through Columbiana, and you made out the bill of lading, is that correct?

A Yes, sir.

Q Where did you take this shipment?

A Sharon, Pennsylvania.

Q Where did you get your shipping orders? Where did this come from?

A This steel come from Wheeling—or Weirton, right across the river from Steubenville there.

Q You mean the City of Weirton?

(tr 185) A The city, yes, sir. And we went on into Youngstown and had bills made up there, then went on to Sharon, Pennsylvania, and delivered it the following day.

Q What were your instructions as to the time that you would pick this load up, if you remember?

A Well, all I was told was to go down and pick up this load, and they told me it was on the Ohio side, so we went down at this one steel mill, right down by the river, and asked if there was a load of steel for Franken—we asked for Fred Franken, see—we had a pick-up slip showing we were to pick up a load of steel there, and down by the river there you could see across the river, and they said, "You go right over across to that place there, this"—

Q Lorentzen?

A Yes. Well, they pointed out the building, so we went over there and picked up the steel.

Q What time of the day or night was this?

A If I'm not mistaken we was supposed to be there at nine o'clock.

Q In the morning or evening?

A Evening. And we got there about quarter till nine and there was nobody there to load up so we just waited, and about fifteen minutes later, if I'm not mistaken there was two fellows that showed up there that started to load us; so
(tr 186) we were there about an hour or an hour and a half and we went on to Youngstown.

Q You say all you had from your dispatcher was a pick-up order?

A Just a pick-up slip, yes, sir.

• • • •

(tr 188) Q Did you receive any shipping orders from the Lorentzen people after they loaded your trailer?

A No, sir.

Q Did you ask for it?

A Yes, sir. I asked for a shipping order and they said, "You don't need any," and I says, "Why not?" and he said, "You don't need any," so he says, "Get your bills in Youngstown," so I went on to Youngstown.

Q Was that regular or irregular, as far as you knew?

A I think it was irregular.

Q Did you ever pick up a shipment before without getting
(tr 189) shipping orders?

A Yes, sir, but I had got a tally sheet.

Q You got something from the mill that you got it from?

A Yes, sir, I did.

(tr 190) RALPH P. CARROCCE

For the Government—Cross.

• • • •

Q And you had some sort of a paper with you, some sort of an order, as to where to get it and how much it weighed, approximately, and so forth?

A All I had was a pick-up slip with a name on it—I can't recall the name right now—I think it was—but it had something to do with Franken.

Q You have said you don't know Mr. Franken at all, is that correct?

A No, sir, I have never seen the man.

Q Outside of instructions to pick this up at nine o'clock, did you get any other special instructions in this particular case?

A No, sir.

Q You say you have on various occasions before picked up loads such as this without any shipping orders, is that correct?

A Without a shipping order, but I got a tally sheet.

Q What is a tally sheet?

A A tally sheet is a—say you have eight coils, it has the weight of each coil.

Q In this particular case did they give you some kind of paper indicating the weight?

A No, sir.

Q How did you arrive at that weight in order to put it

(tr 191) on the order which you picked up in Youngstown?

A Well, all the fellow told me was how much weight there was. The weight was — if I'm not mistaken it was stenciled on every coil, and that's what—the fellow added it up and he just told me—didn't write anything down, he just said, "Your weight is," as I recall, "forty-five thousand and some odd pounds."

Q He merely gave you that information rather than giving you a tally sheet?

A Yes, sir. I asked for one and he says there wasn't any.

Q And on that particular steel the weight was still included on each one of the coils, is that right?

A Yes, Sir.

(tr 192) RALPH P. CARROCCE

For the Government—Redirect

By Mr. Morgan:

Q One further question. Did you sign for the shipment at Lorentzen?

THE WITNESS: Did I sign for it?

Q Did you sign anything?

A No, sir, I didn't sign anything.

MR. MORGAN: No further questions of this witness.

* * * *

(tr 199) SIDNEY BORENSTEIN

For the Government—Direct

By Mr. Morgan:

Q You are Sidney Borenstein?

A Yes, Sir.

* * * *

Q And what is your business, sir?

A Well, we buy and sell steel.

Q In what name, sir?

A Superior Steel Service

Q And who owns that business?

A My brother and myself.

* * * *

(tr 201) Q Do you know who hauled your freight from Weirton, West Virginia, to Chicago, Illinois?

A I know it was Aetna Freight Lines.

Q And, per arrangement, who paid for that transportation?

A We did.

Q You did?

A Yes, Sir.

Q So any payment that you made to Franken included only the payment for steel—

A (Interrupting) Yes, sir.

Q (Continuing)—and not also transportation?

A Correct

(tr 202) Q If you remember, Mr. Borenstein, how much did you pay per pound for the steel you bought from Fred Franken?

A We paid 7½ cents.

Q A pound?

A That's right.

Q Straight?

A That's right.

Q Will you tell the Court and jury, and refer to your notes, how many pounds of steel you purchased from Mr. Franken in these two shipments?

A In these particular shipment we purchased 78,995 in one lot and 45,550 in another during the month of August, 1955.

Q And how much did you pay Mr. Franken for these shipments?

A The first shipment cost $5,924.63, and the second shipment cost $3,416.25.

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(tr 232) RAYMOND H. JONES

For the Government—Direct

By Mr. Morgan:

Q You are Mr. Raymond Jones?

A Yes, Sir.

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Q And what is your occupation?

A I am the the general auditor of Sharon Steel Corporation.

Q And where is your office?

(tr 233) A Office is in Farrell, Pennsylvania.

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Q Has your company had any business transactions with Fred Franken?

A Yes, sir.

Q Did it have transactions between November of 1954 and August of 1955?

A Yes, sir.

Q If you know, how many transactions occurred during that period?

A Six.

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(tr 236) Q For these shipments, Mr. Jones, are you prepared to state to the Court and jury the total amount of steel shipped by Fred Franken to your company, and also what you paid for it?

A There were six shipments, 351,120 pounds, $19,175.00

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(tr 239) RAYMOND H. JONES

For the Government—Redirect.

By Mr. Morgan:

Q I have one further question. Do you know what the price per pound was for this steel paid by your company to Mr. Franken?

A Yes, the first shipment was four cents a pound. That was the narrow coils, wastersheets. The balance of it was .055. That's without the freight.

Q I was going to ask you, did your company pay the freight on each shipment?

A The company paid the freight.

Q The first was four cents a pound and the remaining shipments were .055?

A It averages out about .0546 a pound.

MR. MORGAN: Thank you very much. You may inquire.

MR. GOODWIN: No questions.

By the Court:

Q Mr. Jones, I would like to ask you one question before you leave, if you can tell me. The prices paid to Mr. Franken for these various shipments of steel, were those what you would consider the fair market value?

A Yes, sir.

Q They were?

A Yes, sir.

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(tr 240) WILLIAM C. STEWART

For the Government—Direct.

By Mr. Morgan:

Q Your name is William Stewart?

A Yes, sir.

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Q Who are you employed by?

A Levelola Vincent.

Q Is that a Lorentzen Hardware Manufacturing Company affiliated company?

A Yes, sir.

(tr 241) Q And what is your official capacity?

A I am a salesman.

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Q Prior to your being a salesman with the company in Atlanta where were you located?

A I was a truck driver for the Lorentzen Hardware at Weirton.

Q In Weirton?

A Yes, sir.

Q Do you know Fred Franken, the defendant in this case?

A Yes, sir.

Q Have you ever seen him around the Lorentzen Hardware Manufacturing company in Weirton?

A I don't remember if I have or not.

Q Where have you seen him, sir?

A At his home in Youngstown.

Q What was your occasion for being in his home?

A I was sent up to his home to pick up an envelope.

Q Who by?

A Paul DeArdo.

• • • •

(tr 243) Q Tell the Court and jury just what happened.

A Well, evidently Paul had talked to him over the telephone and he told him he was sending me up, and I went to his home and he wrote out a check

for me, but then he took it to the bank, I went to the bank with him, and he cashed the check—I believe it was $1600.00—and he gave it to me in fifty-dollar bills — $1600.00, I believe that's what it was.

Q $1600.00?

A I am pretty sure it was.

Q And what were you to do with that money?

A Take it back to Mr. DeArdo.

Q And that was from Fred Franken?

A Yes, sir.

Q And did you upon any other occasion receive money from Fred Franken for Paul DeArdo?

A Yes, sir.

Q Oh, you did? When?

A I don't remember the date. I think it was late winter or spring after that Christmas.

Q Where did you receive the money then?

A I met him in Steubenville over by Haines Trucking

(tr 244) Company, in their lot where the trucks are parked in there.

Q How did you know to meet him there?

A Mr. DeArdo sent me over there to meet him.

Q And where did you meet him—in the trucking lot?

A There's a trucking lot there, yes, sir.

Q And was he there when you got there?

A Well, he was driving up and down the hill there and I saw him passing and I got out of my car where he could see me and when he saw me he stopped.

Q Fred Franken did?

A Yes, sir.

Q What kind of a car was he driving?

A It was a 1953 Pontiac, two-toned, brown and yellow, I think.

Q And did he give you money on that occasion?

A Yes, sir.

Q How did you get it?

A I believe it was in fifty-dollar bills again, just in cash.

Q Did he get out of his car and give it to you, or what happened?

A I think I got in his car with him. I'm not too sure about it, but I'm pretty sure I got in his car and he just handed me the money.

Q And what did you say the amount was, and the

(tr 245) denominations?

A I think it was fifty-dollar bills, and I'm not sure of the amount. It could have been anywhere from four to eight hundred dollars. It was several hundred dollars.

Q That was for Paul DeArdo?

A That was for Paul.

Q And did you take it to Paul?

A I gave it to Paul.

(tr 245) WILLIAM R. MANNING

For the Government—Direct.

By Mr. Morgan:

Q You are Mr. William Manning?

A Yes, sir.

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(tr 246) Q Where are you employed?

A Lorentzen Hardware, Weirton.

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(tr 247) Q What time of the year, and what year?

A Well I don't recall the exact time, but it was cold. The reason I say that, he had a top coat on the times that I talked to him. But I would say around—I'd say about '55, just before Paul left.

Q Just before Paul left?

A Yes, sir.

Q What, if anything, did you ever say to Mr. Franken?

A Well, there was times that I went out, I was told to tell him Mr. DeArdo wasn't around and that he may not be back for a couple of days.

Q How many times did you do that?

A I believe it was three.

Q And who told you to tell him that?

A Mr. DeArdo.

(tr 248) WILLIAM R. MANNING

For the Government—Cross.

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Q And where would he be when you would give that information?

A Usually in the garage or in the office.

Q Would he be in a poker game?

A No, I never—he never left the poker game. no.

Q He never left the poker game?

A Well, I mean, there was never a poker game in session when I had to tell someone that. (tr 249) A No. The reason I remember Mr. Franken is because I knew he was from not around here.

Q Where was he from?

A I don't know where he was from, but I knew he wasn't—didn't have no connection with our company.

Q He had no connection with your company?

A Not that I knew of.

Q You didn't know why he was there?

A No, sir, I wasn't told.

Q You were never told?

A No, sir.

Q And what time of the day—would this be at night that you carried those messages?

A No, sir.

(tr 250 Q During the business day?

A During the business day.

Q And that was while your boss, the superintendent, Mr. DeArdo, was actually there at the plant?

A Yes, sir.

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(tr 283) THE COURT: Well, gentlemen, if you have finished, I don't believe that we need to recount here all of the circumstances that have developed in the testimony of this case. There are, in the court's opinion, a number of others which have not been mentioned by either side, circumstances which might well be considered by a jury in the face of the testimony, or in the light of the testimony, that has already been introduced. You have the testimony of DeArdo, and the court very distinctly understood him to say, or at

(tr 284) least that was the court's impression of his testimony, that they were to split the proceeds

from these sales on a fifty-fifty basis, not the commissions but the proceeds from the sales. He has testified that he received from Mr. Franken in cash on various occasions, some of it paid to other parties to be relayed to DeArdo, between eight and nine thousand dollars which would conceivably be many, many times a half of the split of reasonable commissions on these sales. Even that would be a circumstance which would tend to charge this man with guilty knowledge in connection with that transaction, if property was being taken out of the plant of the Lorentzen Hardware Manufacturing Company and sold to these steel mills around over the country in a period of time, according to Mr. Brown's testimony, as I remember it, when steel was very tight, it was difficult to get that grade of steel. Here's a company who is in the manufacturing business buying steel for its own manufacturing purposes. Only on one occasion, according to the testimony, was any of the steel sold—what we would term rejects; the rest of it was prime steel, and for which Sharon was paying an average of something between five and five and a half cents, or a little over five cents a pound—some of it was sold in Chicago for something around seven and a half cents—but in a period

(tr 285) when steel was scarce, and taking it out of a manufacturing plant, a plant which would ordinarily not have been selling steel at all, all of those circumstances are circumstances which, in my opinion, the jury has a right to consider in connection with DeArdo's testimony.

So, in the court's opinion, as the case now stands, there would be sufficient justification for permitting the case to go to the jury, because no part of the Government's testimony is contradicted. So the motion will be overruled at this time.

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(tr 351) FRED FRANKEN

For the Appellant—Direct.

By Mr. Spillers:

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(tr 394) Q There is some testimony in this case by the Government about the prices that you paid and received for this prime steel, or steel that was not scrap or had not been worked in some manner, and I would ask you whether or not at my request you did make an effort to get trade papers or information to show what the price was during this period of time.

A Yes, I have written to the Metal Market last week and asked them if they would send me papers, any one at all, for part of the year—the latter part of the year of '54 and some of early '55—if they would. I have some of them here that they sent.

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(tr 407) MR. SPILLERS: Very well, if I am wrong in wanting to see that I will withdraw the motion as to that, but before this case went to trial, before a jury was selected, I did make a motion

for statements by one of the co-defendants here, Paul Albert DeArdo, and if that is a bad precedent, or if it's called a fishing expedition—I have no way of knowing what's in there. Apparently the Government does not wish to let me see any such statements made. I would like to merely request that if there are any there and it's improper for me to see them that the Court look at them.

MR. MORGAN: I haven't spoken to his request to see DeArdo's statement. He said that there were several statements. The Government has found one statement that was given, and it is a copy of a signed statement of the Government witness Paul DeArdo, and I have it here, if the Court desires to see it or if the Court orders that the Government furnish it to Mr. Spillers. I contemplate putting Mr. DeArdo back on the stand. I don't recall Mr. Spillers having made a motion for this statement before, except that there was some sort of a request to have any statements made by Whitehead and DeArdo. Of course, that's too general.

THE COURT: At an earlier day of the term, Mr. Spillers, there was a motion made for the production and inspection or the right to copy the signed statements of the defendants
(tr 408) Paul Albert DeArdo and James A. Whitehead. That motion was at that time refused. However, if the United States Attorney has no objection to your looking it over, I am sure the court has no objection.

MR. SPILLERS: Thank you.

MR. MORGAN: You want Whitehead's also now, Mr. Spillers?

MR. SPILLERS: Are you planning to—

MR. MORGAN (Interrupting): I plan to call him back, yes, sir.

MR. SPILLERS: Of course I want both of them, then, if they are going to be called back, and that will be, of course, at the time, over my objection since they have already been here and testified and been cross examined.

THE COURT: Are you ready to have the jury return, gentlemen?

MR. MORGAN: Yes, sir.

Mr. Morgan thereupon handed papers to Mr. Spillers.

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